

teckcominco

BY FAX AND COURIER

January 12, 2004

G. Leonard Manuel  
Vice President & General Counsel  
Direct Dial: (604) 685 3012  
Faxcom: (604) 844 2509  
Email: len.manuel@teckcominco.com

TECK AT 30 DAY AFTER COMPLETION

OR AT - NOT 65

826 43

Mr. Michael F. Gearhead  
Director, Environmental Cleanup Office  
United States Environmental Protection Agency  
Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101  
USA

EPA is coop. w/ SACU (Mason)  
w/ more data

Sound Science

TARGETS -> NOT SCHEDULED  
EXAMPLES TCO TO MT - NOT ALIAS

Dear Mr. Gearhead: METALS CONTAMINANT ONLY

R 32 Science Panel REPLY IF MISTAKE WILL  
TECK COMINCO

Teck Cominco Metals Ltd. (TCML) has received and reviewed your letter of December 11, 2003, and the enclosed Unilateral Administrative Order (UAO) under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) directing TCML to perform a Remedial Investigation and Feasibility Study for the Upper Columbia River Site (Site), in conformance with an attached Scope of Work. That Site includes the Columbia River from the Grand Coulee Dam north to the US/Canada border. In issuing the UAO to TCML, EPA Region 10 alleges that contaminants, including slag, were discharged from TCML's Trail Smelter into the Columbia River. The Trail Smelter is located in Trail, British Columbia and the alleged discharges occurred wholly within Canada. Although the UAO also alleges that numerous other facilities, both within and outside the United States, and owned or operated by persons other than TCML, have released hazardous substances at the Site, the UAO is directed solely to TCML.

As EPA has acknowledged, this effort to use CERCLA to attach liability based on discharges from a facility physically located outside the United States, and not otherwise subject to its jurisdiction, is unprecedented, and inconsistent with the cooperative approach taken by the United States and Canada in dealing with other situations involving transboundary pollution over the last century. We understand that the Canadian government has formally advised the United States that it opposes the extraterritorial application of CERCLA to facilities in Canada.

EPA's effort to expand the application of CERCLA outside the United States is also not supported by any reasonable reading of the language of CERCLA. Indeed, any contrary reading would leave foreign facilities, including those owned or operated by foreign governmental entities, subject to the vast, fully retroactive liability net of CERCLA with even fewer defenses than those available to domestic parties. Accordingly, TCML holds firmly to the view that the alleged discharges from the Trail Smelter provide no basis for issuing this UAO to TCML, or otherwise making TCML a liable party under CERCLA.

USEPA SF



1441999

Teck Cominco Metals Ltd.

000-200 Burrard Street

csimille: 604 687.6100

ATTACHMENT 3

AFTER COMPLETION OF RMI

SP DECIDES WITH RESE

ATTACH TO TECK

TO ADDRESS  
WITH LEGIT SCIENTIFIC  
W/ AMON STUO SCIENT. INFORMATION

- 2 -

However, as we have also made clear to EPA Region 10 in our discussions over the past year, TCML is willing to assume voluntarily the costs of investigation of the alleged contamination from the Trail Smelter, and the costs of appropriately addressing risks from that contamination. In confirmation of that position, TCML encloses with this letter an enforceable agreement setting forth that commitment unequivocally, along with its commitment to address appropriately risks to human health and the environment attributable to the Trail Smelter identified in the investigation.

We look forward to working with EPA to address contamination in the Upper Columbia River Site as promptly as possible in a responsible way, using sound science to identify and respond appropriately to the identified risks.

Yours truly,



G. Leonard Manuel  
Vice President & General Counsel



SP = 1 EPA, 1 TCAI CHAIR  
SELECTED JOINTLY

EPA, IN COOPERATION w/ TCAI

SP 5..

IN CONSULTATION w/

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

MATTER OF:  
Upper Columbia River Site

RESPONDENT:  
Teck Cominco American Incorporated  
Spokane, Washington

Order on Consent

INTRODUCTION

Whereas, this Order on Consent is a cooperative, enforceable agreement entered into voluntarily by the United States, through the United States Environmental Protection Agency (EPA), and Teck Cominco American Incorporated (Respondent or TCAI) (collectively "the Parties") regarding investigative activities for the Upper Columbia River Site located in the State of Washington as well as reimbursement to EPA for its past response costs.

WHEREAS the work under this Order on Consent will address concerns that historic metals contamination in Lake Roosevelt and the Upper Columbia River ("the Site") may present human health and ecological risks.

WHEREAS the Parties recognize that the factors producing ecological impacts on the Site

are varied and complex, and include, inter alia, flood control, irrigation, hydroelectric generation, and anadromous fish management.

WHEREAS, TCAI commits to funding the assessment of human health and ecological risk related to historic metals contamination as set out in this Order on Consent, with the Parties understanding that those commitments related to schedules are considered as targets and their attainment may be subject to force majeure factors, such as delays in completion of consultation and review activities involving other parties, and weather constraints:

- ♦ Fully fund the assessment of human health and ecological risk related to metals contamination, including reasonable oversight costs incurred by the EPA, State of Washington, COG, and Tribes, and reimbursement of reasonable costs already incurred by EPA in connection with its investigation of the Site;
- ♦ Begin work immediately on development of work plans for site characterization and the human health and ecological risk assessments;
- ♦ Subject work plans and implementation to EPA oversight and approval, in accordance with predetermined schedules, with regular reports to EPA by the technical staff;
- ♦ If warranted by the risk assessment, conduct additional site investigations as required to identify appropriate remediation, restoration or mitigation alternatives for identified risks at the Site;
- ♦ If warranted by the risk assessment, obtain the appropriate agreements from Teck Cominco Metals Ltd., pursuant to Section 43, to conduct remediation and/or mitigation for metals contamination attributable to its operations, if risk assessment shows it is needed;
- ♦ Enter into an agreement tolling the operation of any limitations period affecting claims at the Site by EPA or natural resource trustees.

WHEREAS TCAI understands from technical discussions already held by the Parties that the risk assessment processes to be carried out under this Order on Consent will cost in excess of \$10 million to complete.

WHEREAS the Parties intend that all work carried out under this Order on Consent be



performed in a manner representing sound science, and consistent with the technical requirements of appropriate EPA technical guidance documents, and with the National Contingency Plan.

ACCORDINGLY, the undersigned parties agree to this Order on Consent directing implementation of risk assessment activities at the Site pursuant to the following terms:

#### I. JURISDICTION

1. This Order on Consent is entered into by the United States, acting on behalf of EPA, under the inherent authority to resolve litigation involving the United States.

2. This Order on Consent is without prejudice to the right of Respondent to raise all claims and defenses, including jurisdictional defenses, should EPA or the United States seek to require Respondent to conduct work outside that covered within the terms of this Order, seek recovery of response costs for work outside this Order, or seek damages for injury to natural resources, nor does Respondent's agreement to this Order on Consent limit Respondent's ability in any way to challenge in an appropriate forum actions or decisions by EPA that rely on or follow work carried out pursuant to this Order on Consent.

#### II. PARTIES BOUND

4. The obligations and benefits of this Order on Consent shall apply to and be binding upon EPA, the Respondent, its agents, successors, assigns, officers, directors, and principals. The signatories to this Order on Consent certify that they are authorized to execute and legally bind the parties they represent to this Order on Consent. No change in the ownership or corporate status of the Respondent or of the facility or Site shall alter Respondent's responsibilities under this Order on Consent.

5. The Respondent shall provide a copy of this Order on Consent to any subsequent owners

or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondent shall provide a copy of this Order on Consent to all contractors, subcontractors, laboratories, and consultants which it retains to conduct any work performed under this Order on Consent, within fourteen (14) days after the effective date of this Order on Consent or the date of retaining their services, whichever is later. Respondent shall require in any such contract that the work under the contract is to be in compliance with the requirements for such work under this Order on Consent. Notwithstanding the terms of any contract, Respondent is responsible for compliance with this Order on Consent.

### III. STATEMENT OF PURPOSE

6. By entering this Order on Consent, the Parties commit to a cooperative, but enforceable agreement to use sound science to assess and address concerns that metals contamination in Lake Roosevelt and the Upper Columbia may present human health and ecological risks.

7. TCAI commits to funding fully the activities related to metals-contamination described in the work plans jointly developed in this process, including the reasonable costs of oversight of the work under this Order on Consent incurred by EPA, as well as those reasonable costs already incurred by EPA in its investigation of the Site. While the Parties recognize EPA has the major role in the oversight of the work and the resolution of disputes, pursuant to Section XVII, under this Order on Consent, the COG, the State of Washington, and the Tribes will also participate in this process through review and comment to EPA and the Science Panel to be established under this Order on Consent. The Science Panel shall be comprised of one representative from each of EPA and TCAI, and a chair selected jointly by these two representatives. The Science Panel



representatives shall have backgrounds in the performance of human and/or ecological risk assessment. The Science Panel will make non-binding recommendations to EPA related to the draft scope of work for the risk assessment, the draft risk assessment, the draft RI/FS and the draft ROD, and on any other activities under this Order on Consent that EPA and TCAI may jointly refer to the Panel for consideration and recommendation. To the extent that the State, the Tribes, and the COG incur reasonable reimbursable oversight costs regarding metals contamination in this process, TCAI agrees to pay such costs through the procedures in Section XXI of this Order on Consent.

8. Pursuant to paragraph 43, upon completion of the Human Health and Ecological Risk Assessments described in this Order on Consent, the Science Panel shall make further recommendations to EPA regarding what risks attributable to metals contamination from Teck Cominco Metals Ltd. operations to address, whether there is a legitimate scientific justification for the remediation and mitigation of risks identified at the Site attributable to metals contamination from Teck Cominco Metals Ltd. operations, and, if so, whether additional studies would be scientifically appropriate relative to determining how to address such risk through cost effective remediation and mitigation. Respondent will obtain the appropriate agreements with Teck Cominco Metals Ltd. to conduct remediation and/or mitigation for metals contamination attributable to its operations where the risk assessments indicate that there is a scientific basis for cost-effective remediation and mitigation of risks attributable to metals contamination from Teck Cominco Metals Ltd. operations identified at the Site.

#### IV. EPA'S FINDINGS OF FACT

9. The "Upper Columbia River Site" consists of the areal extent of metals contamination in the Upper Columbia River, from the U.S./Canadian border to the Grand Coulee Dam, and those

areas within the United States in proximity to the contamination that may be necessary for implementation of any response action addressing contamination in the River. The Upper Columbia River Site is the principal inflow to Franklin D. Roosevelt Lake (Lake Roosevelt). Approximately 15 river miles south of the U. S./Canada border, the river takes on the characteristics of a lake/reservoir due to the Grand Coulee Dam.

10. The Confederated Tribes of the Colville Indian Reservation (Colville Tribes) and the Spokane Tribe of Indians (Spokane Tribe) own reservation lands along the Upper Columbia River. The Colville Tribes and the Spokane Tribe have treaty-reserved rights and resources, and/or other rights, interests, or resources in the Site. The Colville Tribes petitioned EPA in August 1999 to conduct an assessment of hazardous substance contamination along the Columbia River extending approximately 150 river miles from the U.S./Canada border to the Grand Coulee Dam.

11. EPA began conducting the site assessment in October 1999. EPA selected a Site Assessment Area ("Upper Columbia River Site Assessment Area" or "Assessment Area") from approximately river mile 745 near the U.S.-Canada border to river mile 675 (for purposes of this Order on Consent, the Site). In its site assessment, EPA found contaminants at the Upper Columbia River Site including, but not limited to, heavy metals such as arsenic, cadmium, copper, lead, mercury and zinc. EPA also observed the presence of slag, a by-product of smelting furnaces that contains glassy ferrous granules and other metals, at beaches and other depositional areas within the Assessment Area. EPA is not addressing under this Order on Consent any risk associated with the presence of dioxin and furan in the Assessment Area, and has no information indicating that any facility for which Respondent is responsible has ever released such substances at or into the Site.

12. The Site has been the subject of numerous studies by various governmental entities. Sources of metals, including those, such as mercury, found in the Site Assessment, that have been identified include releases from domestic mining and milling operations, fertilizer production, smelting operations, pulp and paper production, municipal sewage treatment plants, and other



industrial activities both within and outside the United States.

13. Metals found at the Site are known to be toxic to humans and aquatic life, with toxicity dependent, e.g., on concentration and bioavailability. Potential routes of human exposure to slag and metals-contaminated sediment may include direct contact with slag on the beaches of the Upper Columbia River, contact with contaminated sediment during low draw down periods, inhalation of airborne particles, dermal contact, and ingestion of metals-contaminated lake/river water. Consumption of fish, aquatic resources, native plants, and agricultural crops are also potential routes of human exposure to metals contamination, where those resources are shown to take up and retain the contaminants. Resource exposure to contaminants through each of the identified potential exposure routes may be exacerbated by hydrologic factors associated with the management of Lake Roosevelt. Some benthic organisms can accumulate toxins that are attached to sediment particles that the benthic organism ingests. Toxins accumulated in benthic organisms can be transferred up the food chain to higher predators such as fish.

14. EPA completed its site assessment in March 2003. The focus of this Human Health and Ecological Risk Assessment and EPA's Remedial Investigation (RI) is on the chemical impacts hazardous substances in the study area of.

15. The Trail Smelter is an integrated smelting and refining complex in Trail, British Columbia, Canada (hereinafter referred to as the "Trail Smelter") approximately 10 river miles north of the U. S./Canada border. The Trail Smelter, operating under permits issued by Canadian environmental regulators, has disposed of materials into the Canadian portion of the Upper Columbia River, with those materials containing metals including, but not limited to, copper, lead, and zinc, and, in the past, slag. The slag was carried downstream in the passing river current and settled in slower flowing, quiescent areas.

16. The Trail Smelter facility also produces a variety of sulfur products and agricultural fertilizers, which represent a potential source of mercury.

## VI. LEAD AGENCY

23. By concurrently providing a copy of this Order on Consent to the State of Washington, EPA is notifying the State that this Order is being issued, and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order. Respondent's activities in carrying out its obligations under this Order on Consent are to be performed cooperatively with EPA and the Science Panel, and are ultimately subject to approval by EPA. EPA agrees that it will coordinate efforts under this Order on Consent with the Science Panel, and that it will implement those efforts relating to public involvement in the risk assessment process necessary to assure that the activities under this Order on Consent are consistent with the NCP.

## VII. WORK TO BE PERFORMED

24. Within thirty (30) days of the effective date of this Order on Consent, the Parties, through their representatives, shall commence work on the risk assessment activities outlined in Exhibits A, B and C to this Order on Consent. The Parties agree that certain components of the overall work outlined in those Exhibits can be expedited, provided that the activities are carried out within an acceptable risk assessment framework. The initial priority shall be development and implementation of a work plan addressing human health risk at the Site. The Parties will also begin work on development of a work plan for an ecological risk assessment, as described in Exhibit C, and will attempt to carry out any collection of data for each assessment in a manner that will minimize duplication of effort or costs. All work performed by Respondent under this Order on Consent shall be under the direction and supervision of qualified personnel. Respondent has notified EPA of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories, to be used in carrying out such work. EPA has reviewed the qualifications of the persons undertaking the work and verified that such persons have the appropriate technical background and experience and approves of them. During the course of the work under this Order on Consent, Respondent shall notify EPA, in writing, of any changes in or additions to the personnel



used to carry out such work, providing their names, titles, and qualifications. EPA shall have the right to approve changes and additions to personnel hereunder.

25. Respondent shall work cooperatively with the Science Panel to conduct activities and submit deliverables as provided below in carrying out the work in Exhibits A-C hereto. All such work shall be conducted using sound science and in accordance with the NCP. The general activities that Respondent is required to perform are identified below, followed by a list of deliverables. The activities and deliverables identified below shall be developed as provisions in the Work Plan and Sampling and Analysis Plan, and shall be submitted to EPA as provided. The Parties recognize the development of a risk assessment framework acceptable to the broad range of public and governmental interests involved at Lake Roosevelt will require substantial effort in the initial stages of the assessment development process, making it difficult to predict the time required to carry out these activities. Notwithstanding this uncertainty, the Parties anticipate that, with the Parties' commitment to cooperate in this effort, the site characterization and risk assessments will require 36-48 months to complete, and anticipate that the timing of those activities will be consistent with the following interim milestone guidelines, absent delay resulting from oversight and review by EPA or the Science Panel. For the purposes of this Order, "day" means "business day" unless otherwise noted in the Order.

- ♦ Initiate consultations with the Science Panel on the risk assessment frameworks within thirty (30) days of the effective date of the Order on Consent.
- ♦ Complete consultations on the risk assessment frameworks within seven months of the effective date of the Order on Consent.
- ♦ Complete development of conceptual site models for human health risk assessment by January 2004.
- ♦ Complete development of the work plan for human health risk assessment by September 2004.

- ♦ Commence work on the human health risk assessment by November 2004.
- ♦ Complete analysis of data for the human health risk assessment and provide a draft report to EPA by April 2006.
- ♦ Complete the final human health risk assessment report by December 2006.
- ♦ Complete development of conceptual site models for the ecological risk assessment by March 2004.
- ♦ Complete development of a work plan for the ecological risk assessment by January 2005.
- ♦ Commence work on the ecological risk assessment by February 2005. Complete analysis of data for the ecological risk assessment and provide a draft report to EPA by July 2007.
- ♦ Complete the final ecological risk assessment report by December 2007.

26. Pursuant to paragraph 43, upon completion of the Human Health and Ecological Risk Assessments described in this Order on Consent, the Science Panel shall make further recommendations to EPA regarding what risks attributable to metals contamination from Teck Cominco Metals Ltd. operations to address, whether there is a legitimate scientific justification for the remediation and mitigation of risks identified at the Site attributable to metals contamination from Teck Cominco Metals Ltd. operations, and, if so, whether additional studies would be scientifically appropriate relative to determining how to address such risk through cost effective remediation and mitigation.

27. EPA, working cooperatively with the Science Panel, shall determine the Site-specific objectives of the human health and ecological risk assessments and devise a general management approach for the Site, as described in the Exhibits hereto. Respondent shall conduct the remainder of the scoping activities as described in the attached Exhibits consistent with EPA guidance. At the conclusion of the project planning phase, Respondent shall provide EPA and the Science Panel with the following deliverables:



A) Human Health and Ecological Risk Assessment Work Plan. Within thirty (30) days of the effective date of this Order, Respondent shall begin consultations with the Science Panel on the Risk Assessment Framework. Respondent shall submit to EPA conceptual site models for the human health risk assessment by January 2004, and conceptual site models for the ecological risk assessment by March 2004. Respondent shall submit to EPA a work plan for the human health risk assessment by September 2004, and a work plan for the ecological risk assessment by January 2005. If EPA disapproves or requires revisions to the above, in whole or in part, Respondent shall amend and submit to EPA a revised Work Plan which is responsive to the directions in all EPA comments, within ninety (90) days of receiving EPA's comments.

B) Sampling and Analysis Plan. By September 2004, Respondent shall submit to EPA the human health Sampling and Analysis Plan. By January 2005, Respondent shall submit to EPA the ecological Sampling and Analysis Plan. These plans shall each consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP), as described in the Statement of Work and guidance. If EPA disapproves of, or requires revisions to, the Sampling and Analysis Plans, in whole or in part, Respondent shall amend and submit to EPA a revised Sampling and Analysis Plans which is responsive to the directions in all EPA comments, within ninety (90) days of receiving EPA's comments.

C) Site Health and Safety Plan. By September 2004, Respondent shall submit to EPA the Site Health and Safety Plan.

Following approval or modification by EPA, the Human Health and Ecological Risk Assessment Work Plans ("Work Plans") and the Sampling and Analysis Plans will be incorporated by reference herein.

28. EPA will prepare a Community Relations Plan, in accordance with EPA guidance and the NCP. Respondent shall provide information to assist EPA in the development of its community

relations program. Within ninety (90) days of a written request by EPA, Respondent also shall provide EPA with a Technical Assistance Plan (TAP) for providing and administering up to \$50,000 of Respondent's funds to be used by the COG and the Tribes, to hire independent technical advisors during the Work conducted pursuant to this Order on Consent. The TAP shall state that Respondent will provide and administer any additional amounts needed if there is a determination of such a need prior to completion of work under this Order on Consent. If EPA disapproves of or requires revisions to the TAP, in whole or in part, Respondent shall amend and submit to EPA a revised TAP that is responsive to EPA's comments, within sixty (60) days of receiving EPA's comments.

Reimbursable costs under the TAG shall include reasonable costs not inconsistent with the NCP, including direct and indirect costs paid or incurred by COG or the Tribe subsequent to the effective date hereof, in reviewing and developing plans, reports or other documents pursuant to this Agreement; reviewing the work hereunder, activities related to the development and implementation of a community relations plan, and reasonable travel costs of their personnel related to the work hereunder. All such costs for which reimbursement is sought by any entity under this paragraph shall be calculated in the same manner as provided for EPA costs under EPA guidance documents.

29. Following EPA approval or modification of the Work Plans and Sampling and Analysis Plans, Respondent shall implement the provisions of these plans to characterize the Site. Respondent shall provide EPA with analytical data within thirty (60) days of each sampling activity, in an electronic format (i.e., computer disk) showing the location, medium, and results. Within seven (7) days of completion of field activities, Respondent(s) shall notify EPA in writing. During Site characterization, Respondent shall provide EPA and the Science Panel with the following deliverables, as described in the Statement of Work and Work Plans:

- A) Technical Memorandum on Modeling of Site Characteristics. Where Respondent proposes that modeling is appropriate, within sixty (60) days of the initiation of Site characterization, Respondent shall submit a technical memorandum on modeling of Site

characteristics, as described in the Statement of Work. If EPA disapproves of or requires revisions to the technical memorandum on modeling of Site characteristics, in whole or in part, Respondent shall amend and submit to EPA a revised technical memorandum on modeling of Site characteristics which is responsive to the directions in all EPA comments, within ninety (90) days of receiving EPA's comments.

B) Preliminary Site Characterization Summary. Within ninety (90) days of completion of the field sampling and analysis, as specified in the Work Plan, Respondent shall submit a Site characterization summary to EPA.

30. By April 2006, Respondent shall submit a draft Human Health Risk Assessment report consistent with the Statement of Work, Work Plan, and Sampling and Analysis Plan. If EPA disapproves of or requires revisions to the report, in whole or in part, Respondent shall amend and submit to EPA a revised report that is responsive to the directions in all EPA comments, within ninety (90) days of receiving EPA's comments.

31. By July 2007, Respondent shall submit a draft Ecological Risk Assessment report consistent with the Statement of Work, Work Plan, and Sampling and Analysis Plan. If EPA disapproves of or requires revisions to the report, in whole or in part, Respondent shall amend and submit to EPA a revised report which is responsive to the directions in all EPA comments, within ninety (90) days of receiving EPA's comments.

32. The Science Panel shall have the opportunity to review, comment on and suggest changes for all deliverables. At EPA's discretion, Respondent must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables. EPA may, after consultation with the Science Panel, modify a work plan developed under this Order on Consent, if in the course of an assessment the Science Panel determines that such modification is required to address the issues identified in the characterization of the Site. Nothing in this Order on Consent shall otherwise limit EPA's ability to exercise its



authority under federal law to address conditions at the Site, including but not limited to, its right to carry out work contemplated by this Order on Consent itself, or to issue an order addressing investigation and remediation of conditions that may present an imminent and substantial endangerment to human health and the environment. However, Exhibits A, B and C to this Order on Consent are intended to guide the Site characterization and risk assessments carried out under this Order on Consent. Any decision by EPA to modify a work plan shall be subject to the Dispute Resolution process in this Order on Consent. Further, EPA shall not propose the Site for listing on the National Priorities List so long as TCAI is meeting its obligations under the terms of this Order on Consent.

33. EPA shall have the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point during the term of this Order on Consent. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by EPA. For the following deliverables, Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval: Human Health and Ecological Risk Assessment Work Plans, Sampling and Analysis Plans, Draft Human Health and Ecological Risk Assessment Reports, and Sampling and Analysis Plans. While awaiting EPA approval on these deliverables, Respondent shall proceed with all other tasks and activities that can be conducted independently of these deliverables, in accordance with the schedule set forth in this Order on Consent.

34. Respondent shall, prior to any off-Site shipment of hazardous wastes from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Designated Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-Site shipments when the total volume of such shipments will not exceed ten (10) cubic yards.



A) The written notification shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

B) The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the Human Health and Ecological Risk Assessment. Respondent shall provide all relevant information, including information under the categories noted in Paragraph 34(a) above, on the off-Site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

#### VIII. EPA'S BASELINE RISK ASSESSMENT

35. EPA will perform the Baseline Risk Assessment, in cooperation with Respondent, the State of Washington, the COG, and the Tribes, utilizing the information to be supplied by Respondent, as outlined above, and in consultation with the Science Panel. The major components of the Baseline Risk Assessment are the Human Health and Ecological Risk Assessments, which include contaminant identification, exposure assessment, toxicity assessment, and human health and ecological risk characterization.

36. EPA will provide information concerning the baseline risks, as part of the Respondent's Human Health and Ecological Risk Assessment. This information will normally be in the form of two or more Baseline Risk Assessment memoranda prepared by EPA. One memorandum will generally include a list of the chemicals of concern for human health and ecological effects and the corresponding toxicity values. Another should list the current and potential future exposure

scenarios, exposure assumptions, and exposure point concentrations that EPA plans to use in the Baseline Risk Assessment. The public, including the Respondent, may comment on these memoranda. However, the Agency is obligated to respond only to significant comments that are submitted during the formal public comment period.

37. After considering any significant comments received, EPA will work in cooperation with the Science Panel to prepare a Baseline Risk Assessment Report based on the data collected by the Respondent during the Human Health and Ecological Risk Assessment. EPA will release this report to the public.

#### IX. MODIFICATION OF THE WORK PLAN

38. If at any time during the Human Health and Ecological Risk Assessment process, Respondent, in cooperation with the Science Panel, identifies a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within twenty (20) days of identification. EPA, in consultation with the Science Panel, will determine whether the additional data will be collected by Respondent and whether it will be incorporated into reports and deliverables.

39. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondent shall notify EPA and the State immediately. In the event of significant unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Project Coordinator by telephone within twenty-four (24) hours of discovery of the unanticipated or changed circumstances. In the event that EPA, after consultation with the Science Panel, determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plans, EPA shall modify or amend the Work Plans, in writing, accordingly. Respondent shall perform the Work Plans as modified or amended.

40. EPA may, in cooperation with the Science Panel, determine that in addition to tasks

defined in the initially approved Work Plans, additional work may be necessary to accomplish the objectives of the Human Health and Ecological Risk Assessment. EPA, in cooperation with the Science Panel, may seek to have the Respondent perform these response actions in addition to those required by the initially approved Work Plans, including any approved modifications, if the Science Panel determines that such actions are necessary for a complete Human Health and Ecological Risk Assessment consistent with sound science. Respondent shall confirm its willingness to perform the additional work, in writing, to EPA within thirty (30) days of receipt of the EPA request or Respondent shall invoke dispute resolution. Subject to resolution of any dispute, pursuant to Section XVII, Respondent shall implement those additional tasks that EPA determines are necessary to comply with principles of sound science. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan(s) or written Work Plan Supplement.

#### X. QUALITY ASSURANCE

41. Respondent shall assure that work performed, samples taken, and analyses conducted conform to the requirements of sound science, as set out in the Statement of Work, the QAPP and guidance identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain-of-custody procedures.

#### XI. FINAL RI AND ADMINISTRATIVE RECORD

42. EPA retains the responsibility for the release to the public of the Human Health and Ecological Risk Assessment Report, and shall provide Respondent and the Science Panel with the Agency's final RI Report, if EPA completes one.

43 After completion of the Human Health and Ecological Risk Assessments, Respondent shall engage in further discussion with EPA and the Science Panel regarding what risks

attributable to metals contamination from Teck Cominco Metals Ltd. operations to address, what additional studies, if scientifically appropriate, to perform relative to metals contamination from Teck Cominco Metals Ltd. operations, and whether there is a scientific basis for the remediation and mitigation of risks identified at the Site attributable to metals contamination from Teck Cominco Metals Ltd. operations. Respondent will obtain the appropriate agreements with Teck Cominco Metals Ltd. to conduct remediation and/or mitigation for metals contamination attributable to its operations where the risk assessments indicate that there is a scientific basis for the remediation and mitigation of risks attributable to metals contamination from Teck Cominco Metals Ltd. operations at the Site.

44. EPA will determine the contents of any administrative record file it may create for the Human Health and Ecological Risk Assessment. Respondent must submit to EPA documents developed during the course of the Human Health and Ecological Risk Assessment, including copies of plans, task memoranda, including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Respondent must additionally submit any previous studies conducted under state, local, or other federal authorities relating to the Human Health and Ecological Risk Assessment and all communications between Respondent and state, local, or other federal authorities concerning the Human Health and Ecological Risk Assessment. At EPA's discretion, Respondent may establish a community information repository at or near the Site, to house one copy of the administrative record.

## XII. PROGRESS REPORTS AND MEETINGS

45. Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the Human Health and Ecological Risk



Assessment. In addition to discussion of the technical aspects of the Human Health and Ecological Risk Assessment, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

46. In addition to the deliverables set forth in this Order, Respondent shall provide to EPA monthly progress reports by the tenth (10th) day of the following month. At a minimum, with respect to the preceding month, these progress reports shall: (1) describe the actions which have been taken to comply with this Order on Consent during that month; (2) include all results of sampling and tests and all other data received by the Respondent; (3) describe work planned for the next two (2) months with schedules relating such work to the overall project schedule for the Human Health and Ecological Risk Assessment completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

### XIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

47. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondent, or on Respondent's behalf, during implementation of this Order on Consent, shall be submitted to EPA in the subsequent Monthly Progress Report as described in Section XII of this Order. EPA will make available to the Respondent all data, including all validated data, generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

48. Respondent will verbally notify EPA at least fifteen (15) days prior to conducting significant field events as described in the Statement of Work, Work Plans, or Sampling and Analysis Plans. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by the Respondent in implementing this Order on Consent. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

49. To the extent that Respondent has control of access to the Site, at all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-Site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondent and its contractor pursuant to this Order; reviewing the progress of the Respondent in carrying out the terms of this Order on Consent; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device, or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken by Respondent in carrying out this Order on Consent. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph shall comply with all approved Health and Safety Plans.

50. The Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order on Consent. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondent. Respondent agrees not to assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

51. In entering into this Order, EPA and Respondent waive any objections to the admissibility of any data gathered, generated, or evaluated by EPA, the State or Respondent in the performance or oversight of the work, where those data have been verified according to the quality assurance/quality control (QA/QC) procedures required by the Order on Consent or any EPA-approved Work Plans or Sampling and Analysis Plans. If EPA or Respondent objects to use of any

other data relating to the Human Health and Ecological Risk Assessment, the objecting party shall submit to the other party a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. Where the data are included in a monthly report, the report supporting an objection to the data must be submitted to the other party within fifteen (15) days of the monthly progress report containing the data.

52. If the Site, or an off-Site area that is to be used for access or is within the scope of the Human Health and Ecological Risk Assessment is owned in whole or in part by parties other than those bound by this Order on Consent, Respondent will obtain, or use its best efforts to obtain, Site access agreements from the present owner(s) within one hundred and twenty (120) days of the effective date of this Order on Consent. Such agreements shall provide access for EPA, its contractors and oversight officials, the state and its contractors, and the Respondent or its authorized representatives, and such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities, nor is EPA or the state, a representative of Respondent. Copies of such agreements shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's "best efforts" shall include an offer to provide reasonable compensation to any off-Site property owner. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. EPA may obtain access for the Respondent, perform those tasks or activities with EPA contractors, or terminate the Order on Consent in the event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Order on Consent, Respondent shall perform all other activities not requiring access to that Site, and shall reimburse EPA for all costs incurred in performing such activities. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, the Respondent agrees to indemnify the U.S. Government as specified in Section XXVII of this Order. Respondent also shall reimburse EPA for all costs and attorney fees incurred

by the United States to obtain access for the Respondent.

#### XIV. DESIGNATED PROJECT COORDINATORS

53. Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Order on Consent, shall be sent by certified mail, return receipt requested, to the following addressees or to any other addressees which the Respondent and EPA designate in writing:

A) Documents to be submitted to EPA should be sent to [seven copies]:

Cami Grandinetti  
EPA Project Coordinator  
Environmental Cleanup Office  
U.S. Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, Mail Code ECL-113  
Seattle, Washington 98101

B) Documents to be submitted to the Respondent should be sent to [include number of copies]:

David Godlewski  
Teck Cominco American Incorporated  
15918 E. Euclid Avenue  
Spokane, WA 99216-1815

54. EPA and TCAI have designated work teams and coordinators for the project in connection with the preliminary technical discussions leading to this Order on Consent. The Parties agree that in the development and implementation of the work plans under this Order on Consent, they will also provide for the involvement of the Science Panel. Each Project Coordinator shall be responsible for overseeing the implementation of this Order on Consent. To the maximum extent possible, communications between the Respondent and EPA shall be directed to the Project Coordinator by mail, with copies to such other persons as EPA, the state, and Respondent may respectively designate. Communications include, but are not limited to, all documents, reports, approvals, and other correspondence submitted under this Order on Consent.



55. EPA and the Respondent each have the right to change their respective Project Coordinator. The other party must be notified, in writing, at least ten (10) days prior to the change. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority to halt any work required by this Order on Consent, and to take any necessary response action, when he or she determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Order on Consent shall not be cause for the stoppage or delay of work.

56. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the work under this Order on Consent. The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the Work Plan.

#### XV. OTHER APPLICABLE LAWS

57. Respondent shall comply with all laws that are applicable when performing the work under this Order on Consent. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-Site, including studies, where such action is carried out in a manner consistent with Section 121 of CERCLA, 42 U.S.C. § 9621.

#### XVI. RECORD PRESERVATION

58. All records and documents in EPA's and Respondent's possession that relate in any way to the Site shall be preserved during the conduct of this Order on Consent and for a minimum of ten (10) years thereafter. Documents in possession of the Respondent include all documents that relate to the Site that are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10-year period, the Respondent shall notify EPA, and for at least ninety (90)

days after that notification, shall not destroy these documents. If, within that ninety day period, EPA requests that the documents be saved, the Respondent shall, at no cost to EPA, give EPA the documents or copies of the documents, except where Respondent asserts a claim of privilege.

## XVII. DISPUTE RESOLUTION

59. The Parties agree that, in resolving any disagreement under this Agreement, they will first attempt to resolve the matter through informal discussions between the Parties. Where the Parties are unable to resolve informally a disagreement on any matter arising under this Agreement, a Party may invoke the formal Dispute Resolution process by notifying the other Party in writing of its intention to do so, and describing the nature of the dispute, and the position of the Party invoking Dispute Resolution. Within fifteen (15) days after receipt of the notification, the other Party shall provide in writing to the Party invoking Dispute Resolution its position on the disputed matter, including any substantive proposal for resolution of the matter. Thereafter, the original disputing Party shall convene, within fifteen (15) days of receipt of the opposing positions, a meeting of the Parties to attempt to resolve the dispute informally. If the Parties are unable to reach agreement at that meeting, they shall present their respective positions in writing to the Science Panel. The Science Panel shall review the submissions of the Parties and render its position in writing. Either Party may appeal the Science Panel's decision to the EPA Regional Administrator for Region 10 and he/she shall issue a written decision on the dispute. The Regional Administrator's determination is EPA's final decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If the Respondent does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondent, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief. Neither the Dispute Resolution provisions in

this section nor the provisions for Stipulated Penalties in Part XIX shall apply to the performance of further studies or remedial activities described in Sections 8, 26, and 43.

60. Respondent is not relieved of its obligations to perform and conduct activities and submit deliverables on the schedule set forth in the Work Plan, while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this Order.

#### XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

61. Should the Respondent fail to complete a deliverable in a timely manner or fail to produce a deliverable of quality acceptable to the Science Panel, or otherwise fails to meet deadlines set forth in a Statement of Work agreed upon by the Parties, and EPA deems that penalties are warranted, Respondent shall pay stipulated penalties. EPA will provide written notice for violations subject to stipulated penalties. Payment shall be due within thirty (30) days of receipt of a demand letter from EPA.

62. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. Respondents shall further pay a handling charge of one percent (1%), to be assessed at the end of each thirty-one (31) day period, and a six percent (6%) per annum penalty charge, to be assessed if the penalty is not paid in full within ninety (90) days after it is due.

63. Respondent shall make all payments pursuant to instructions to be provided to Respondent by EPA upon execution of this Order on Consent.

64. Stipulated penalties shall accrue in the amount of \$1000 per day, for failing to meet a



report or submission deadline or content requirement agreed upon in the Statement of Work or for failing to modify reports as directed by the Science Panel or EPA. If the deadline is missed by >14 days, the penalty shall be \$3000 per day. If the deadline is missed by >45 days for a major deliverable of the Statement of Work, EPA may find Respondent in breach of this Agreement. Such penalties shall not accrue if EPA has agreed to extend said deadline.

65. Respondent may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVIII herein. Penalties shall not accrue during the dispute resolution period. If Respondent does not prevail upon resolution, all penalties shall be due to EPA within thirty (30) days of resolution of the dispute. If Respondent prevails upon resolution, no penalties shall be paid.

66. In the event that or the Science Panel EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

#### XIX. FORCE MAJEURE

67. In the event of any delay due to Force Majeure occurs or is anticipated, the affected Party shall promptly notify the other Party of such delay and the cause and estimated duration of such delay. The affected Party shall exercise due diligence to shorten, avoid, and mitigate the effects of the delay and shall keep the other Party advised as to the affected Party's efforts and its estimate of the continuance of the delay. Neither Party shall be liable to the other for costs incurred by the other as a result of any delay or failure to perform as a result of Force Majeure. For purposes of this Agreement, "Force Majeure" means an event or condition that causes a delay in performance of this agreement by one Party or both of the Parties, and that is beyond either Party's reasonable control, and includes orders and/or actions of government agencies; fires, floods, earthquakes, or other

occurrences of nature, including loss of public utilities, and may also include the inability, after good faith efforts, to access private land for work required under the Agreement.

#### XX. REIMBURSEMENT OF PAST COSTS

68. Within fifteen (15) days of the effective date of this Order, EPA shall provide to Respondent all documentation supporting EPA's claim for recovery of response costs incurred prior to the effective date of this Order. Within ninety (90) days of the receipt of this documentation, Respondent shall remit a certified or cashiers check to EPA in the amount of \$ \_\_\_\_\_, together with interest that has accrued thereon since October 10, 2003, calculated at the rate of interest specified for the Hazardous Substances Superfund under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or such other amount as Respondent believes is supported by the documentation. To the extent that Respondent disputes the amount sought by EPA, the dispute shall be resolved in accordance with the Dispute Resolution provisions of this Order on Consent. The payments made by Respondent pursuant to this paragraph shall satisfy any obligation of Respondent for response costs including, but not limited to, claims for response costs under CERCLA, for all response actions taken by the United States prior to the effective date of this Order on Consent.

69. Checks should be made payable to EPA pursuant to instructions it shall provide to Respondent upon execution of this Order on Consent.

70. A copy of the check should be sent simultaneously to the EPA Project Coordinator.

#### XXI. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

71. Following the issuance of this Order on Consent, EPA shall submit to the Respondent on an annual basis an accounting of all response costs including oversight costs incurred by the U.S. Government with respect to this Order on Consent during the prior calendar year. Response costs

consist of costs incurred by the U.S. Government in overseeing Respondent's implementation of the requirements of this Order and activities performed by the government as part of community relations, including any costs incurred while obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of Human Health and Ecological Risk Assessment activities, Site visits, discussions regarding disputes that may arise as a result of this Order on Consent, review and approval or disapproval of reports, and costs of redoing any of Respondent's tasks. Any necessary summaries, including, but not limited to, EPA's certified Agency Financial Management System summary data (SPUR Reports), or such other summary as certified by EPA, shall serve as basis for payment demands; however Respondent may request additional documentation as reasonably necessary to document and understand the nature of any charges.

72. Respondent shall, within thirty (30) days of receipt of each accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the later of: the date payment of a specified amount is demanded in writing; or the date of the expenditure. The interest rate shall be the rate of interest on investments for the Hazardous Substances Superfund in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

73. Checks should be made pursuant to instructions to be provided to Respondent upon execution of this Order on Consent.

74. Copies of the transmittal letter and check should be sent simultaneously to the EPA Project Coordinator. Respondent agrees to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Order on Consent. Any disputes regarding payment of costs shall be governed by the resolution procedures of Section XVII of this Order. Respondent shall identify any contested costs and the basis of its objection. All undisputed costs

shall be remitted by Respondent in accordance with the schedule set forth above. Disputed costs shall be paid by Respondent into an escrow account while the dispute is pending. Respondent bears the burden of establishing an EPA accounting error or the inclusion of costs outside the scope of this Order on Consent.

75. The costs incurred by TCAI under this Order on Consent shall be a credit against any TCAI liability to the United States, the State, the Tribes or the COG for costs or damages related to the Site. This provision shall survive termination of this Agreement, whether by completion of the work or by earlier notice from one of the Parties.

#### XXII. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS

76. EPA reserves the right to bring an action against the Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response costs including oversight costs, incurred by the United States at the Site that are not reimbursed by the Respondent, any costs incurred in the event that EPA performs the Human Health and Ecological Risk Assessment or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at this Site.

77. EPA reserves the right to bring an action against Respondent to enforce the past costs and response and oversight cost reimbursement requirements of this Order on Consent, to collect stipulated penalties assessed pursuant to Section XIX of this Order on Consent, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609.

78. Except as expressly provided in this Order, each party reserves all rights and defenses it may have, including jurisdictional defenses. Nothing in this Order on Consent shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

79. Following satisfaction of the requirements of this Order on Consent, Respondent shall have resolved its liability to EPA for the work performed by Respondent pursuant to this Order on Consent, and for response costs incurred by the United States with respect to the Site prior to the effective date of this Order on Consent. Respondent is not released from liability, if any, for any response actions taken beyond the scope of this Order regarding removals, other operable units, remedial design/remedial action of this operable unit, or activities arising pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

#### XXIII. DISCLAIMER

80. By signing this Order on Consent and taking actions under this Order, the Respondent does not necessarily agree with EPA's Findings of Fact. Furthermore, the participation of the Respondent in this Order shall not be considered an admission of liability and is not admissible in evidence against the Respondent in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Order on Consent or a judgment relating to it. Respondent retains its rights to assert claims against other potentially responsible parties at the Site. However, the Respondent agrees not to contest the validity or terms of this Order, or the procedures underlying or relating to it, in any action brought by the United States, including EPA, that is limited to enforcement of the express terms of this Order on Consent. Respondent expressly retains the right, notwithstanding its participation in this Order on Consent to raise any defense or to raise any claim, by way of counterclaim or otherwise, in any action brought with respect to the Site by the United States that in whole or in part seeks relief other than to enforce this Order on Consent, or in any action brought by any person or entity not party to this Order on Consent.

#### XXIV. NATURAL RESOURCE DAMAGE ASSESSMENT PROVISION

81. For the purposes of Section 113(g)(1) of CERCLA, the parties agree that, upon



issuance of this Order on Consent for performance of a Human Health and Ecological Risk Assessment at the Site, the statute of limitations for an action for natural resource damages will be tolled until thirty (30) days after EPA's completion of its RI, if EPA completes one.

#### XXV. OTHER CLAIMS

82. In entering into this Order, Respondent waives any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. § 9696(b) for costs Respondent incurs under this Order on Consent. Respondent also waives any right to present a claim under Section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612 for costs incurred by Respondent under this Order on Consent. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). 91. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, subsidiary, or corporation not a signatory to this Order on Consent for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

83. Respondent shall bear its own costs and attorneys fees.

#### XXVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

84. For purposes of this Order on Consent, "Effective Date" shall mean the latest date on which all the Parties execute this Order on Consent as set forth on the signature page.

85. This Order on Consent may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Order on Consent.

86. No informal advice, guidance, suggestions, or comments by EPA regarding reports,

plans, specifications, schedules, and any other writing submitted by the Respondent will be construed as relieving the Respondent of its obligation to obtain such formal approval as may be required by this Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules, and attachments required by this Order on Consent are, upon approval by EPA, incorporated into this Order.

87. All Parties recognize that this Order on Consent has been negotiated at arms length and good faith, and acknowledge that entering into this Order on Consent and undertaking the activities provided for in this Order on Consent shall not be deemed an admission of liability by any Party hereto, or otherwise an admission against interest, and all Parties hereto acknowledge that nothing in this Order on Consent is intended to, nor does it, affect any Party's ability to assert or raise any claims or defenses, whether legal or equitable, in any action arising in connection with the Site.

88. This Order on Consent is not intended to and shall not create any rights in any person who is not a party to this Order on Consent.

89. This Order on Consent shall remain in effect until the activities described in the work plans jointly developed under this Order on Consent are completed, or until thirty (30) days after such earlier date as one of the Parties hereto gives written notice to the other Party of its intention to terminate this Order on Consent. Termination of the Order on Consent shall not relieve TCAI of its obligation to pay for work completed under this Order on Consent prior to the date of the notice of intent to terminate.

#### XXVII. TERMINATION AND SATISFACTION

90. This Order on Consent shall terminate when the Respondent demonstrates, in writing, and certifies to the satisfaction of EPA that all activities required under this Order on Consent,

including payment of past costs, response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondent's obligation to comply with Sections XVI of this Order on Consent.

91. The certification shall be signed by a responsible official representing the Respondent. The representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Order on Consent, a responsible official is a corporate official who is in charge of a principal business function.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
 Respondent \_\_\_\_\_  
 Title \_\_\_\_\_

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
 David Croxton, Unit Manager, Office of Environmental Cleanup  
 U.S. Environmental Protection Agency